

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-128
)	
)	
RBOC/GTE/SNET Payphone Coalition Petition for Clarification)	NSD File No. L-99-34
)	
)	

REPLY COMMENTS OF ONE CALL COMMUNICATIONS, INC.

One Call Communications, Inc. (“One Call”) hereby replies to the comments filed in response to the petitions of certain interexchange carriers (“IXCs”) relating to the Commission’s Second Order on Reconsideration in the above-captioned proceedings (“*Second Reconsideration Order*”),¹ which modified the Commission’s rules regarding per-call compensation for payphone calls. As demonstrated by the industry’s overwhelmingly negative response to the IXCs’ requests to treat all payphone calls routed to resellers as “completed calls” and to prohibit all direct payphone compensation arrangements between resellers and payphone service providers (“PSPs”), their requests not only embody bad policy but also seek relief that would be both anticompetitive and unlawful under the Act.

The Commission should deny the IXCs’ requests and require them to obtain the call data they need by coordinating with resellers and to acknowledge resellers’ contractual arrangements with PSPs, as suggested by most of the commenters. This common sense, cooperative approach is the only one that will accommodate all interests fairly and legally.

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, Second Order on Reconsideration, CC Docket No. 96-128, FCC 01-109 (April 5, 2001) (“*Second Reconsideration Order*”).

I. THE COMMENTS DEMONSTRATE THE ANTICOMPETITIVE AND ILLEGAL NATURE OF THE AT&T/WORLDCOM REQUESTS REGARDING THE DEFINITION OF “COMPLETED CALL” AND GLOBAL CROSSING’S TIMING SURROGATE PROPOSAL

The vast majority of commenting parties accurately point out the anticompetitive and illegal nature of the requests by AT&T Corp. (“AT&T”) and WorldCom, Inc. (“WorldCom”) to redefine, explicitly or implicitly, the term “completed call” as applied to payphone calls routed to resellers. The AT&T/WorldCom approach extends only to payphone calls routed to resellers, not to those terminated by the underlying IXC’s themselves. Thus, while imposing on resellers a compensation obligation for every payphone call routed to them, irrespective of whether such calls are completed, the IXC’s would continue to pay compensation only for completed payphone calls that they terminate.² The IXC’s accordingly would be able to burden their reseller competitors with up to five times the per-call payphone compensation costs that the IXC’s must bear.³

Imposing such a vast cost differentials on competitors would be unreasonably discriminatory under Section 202(a) of the Communications Act. Moreover, resellers would be forced to pay up to five times the amount of payphone compensation that is required by the *Payphone Orders*.⁴ This requirement would violate Section 276 of the Act as applied by the *Payphone Orders* and would constitute an unreasonable practice under Section 201(b) of the

² See, e.g., CommuniGroup Opp. at 6-7; ASCENT Comments at 11-12. All of the pleadings filed in response to the IXC’s petitions in these proceedings will be cited in this abbreviated manner throughout.

³ See One Call Opp. at 4 and attached Declaration of Ann C. Bernard at 3 (“Bernard Declaration”) (One Call’s completion rate is only 20-30 percent).

⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) (“*Payphone Classification Order*”); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (“*Payphone Reconsideration Order*”) (subsequent history omitted).

Act.⁵ The timing surrogate proposed by Global Crossing Telecommunications, Inc. (“Global Crossing”) would have the same discriminatory and anticompetitive effects as redefining the term “completed call” and also would be unlawful under the Act.⁶

Opposition to the AT&T/WorldCom approach to the definition of completed call is not confined to resellers. Global Crossing, the other IXC petitioner, correctly notes that imposing such an inflated payphone compensation reimbursement obligation on resellers “would result in [PSPs] being grossly overcompensated ... and ... would put [resellers] at a major competitive disadvantage....” “There is no justification for the Commission to sanction such a result”, which would force resellers “to -- or over -- the brink” of financial disaster.⁷ Qwest Communications International Inc., which acts as a PSP, IXC and reseller, agrees that redefining “completed call” in the manner sought by WorldCom would be illegal and unjustified.⁸ The RBOC Payphone Coalition (“RBOC Coalition”) draws a distinction between IXC payphone compensation payment practices and their claims for reimbursement from resellers for such payments. Although the RBOC Coalition does not oppose AT&T’s request that IXCs treat all payphone calls routed to resellers as completed for purposes of their payphone compensation payments to PSPs, it opposes the AT&T/WorldCom proposal that the IXCs be allowed to seek reimbursement for such payments from resellers. The RBOC Coalition points out that, whatever policies the IXCs might adopt in their compensation payments to PSPs, there is no justification for the IXCs to demand reimbursement from resellers for compensation paid under the assumption that all calls routed to resellers are completed.⁹

⁵ See, e.g., Telstar Comments at 4-17; IDT Comments at 6-8, 23-40; IPCA Comments at 2, 5-9.

⁶ See, e.g., Ad Hoc Resellers Comments at 5; Intellicall Comments at 5-6.

⁷ Global Crossing Comments at 2, 4-5.

⁸ Qwest Comments at 6-7.

⁹ RBOC Coalition Comments at 2, 5-7.

II. THE COMMENTS DEMONSTRATE THAT PROHIBITING PSP/RESELLER CONTRACTS WOULD NOT BE JUSTIFIED

The comments were similarly critical of Global Crossing's proposal to prohibit PSPs from entering into payphone compensation payment contracts with resellers. Several parties point out that there is no justification for IXC's to interfere with PSP/reseller arrangements, as some are now doing.¹⁰ Resellers should be able to pay PSPs directly and avoid any reimbursement obligations to IXC's that would duplicate such payments. The RBOC Coalition agrees that there is no justification for prohibiting such private arrangements.¹¹

The commenters also explain that the IXC's' requests to redefine "completed call" or to use a timing surrogate should be denied not only on their own merits, as discussed above, but also because they would have a distorting effect on PSPs' incentives to continue their contractual arrangements with resellers. The inflated payphone compensation payments to PSPs that would result from the proposed redefinition or surrogate would cause PSPs to terminate their alternative direct payment arrangements with resellers. Thus, in addition to reaffirming resellers' rights to pay PSPs directly under contract, the Commission should encourage such private contracting activities by denying the IXC's' requests to redefine "completed call" or to use a timing surrogate, thereby preventing the market distortions that would result from such changes.¹²

III. IXCs SHOULD BE REQUIRED TO ACCEPT RESELLER CALL TRACKING DATA AND ACKNOWLEDGE PSP/RESELLER CONTRACTS

A. There Is No Justification For The IXC's' Lack Of Cooperation In Implementing The Requirements Of The *Second Reconsideration Order*

There was an even broader consensus among the commenters that the most effective way to implement the scheme set forth in the *Second Reconsideration Order* is for IXC's to cooperate

¹⁰ IDT Comments at 45-46; IPCA Comments at 9-10. *See also*, Bernard Declaration at 3.

¹¹ RBOC Coalition Comments at 8-9.

¹² Ad Hoc Resellers Comments at 6; IDT Comments at 46-47.

with resellers in exchanging the call data necessary to meet their respective payphone compensation obligations. The RBOC Coalition points out that “[t]he simple answer to [IXC] complaints [that they lack tracking data for calls routed to resellers] is that a facilities-based carrier should resolve any operational difficulties through negotiations with their switch-based reseller customers.”¹³ As Intellicall Operator Services, Inc. points out, the IXCs’ professed inability to obtain tracking data for calls routed to resellers, upon which they base their requests to force resellers to reimburse them for compensation for all such calls, stems from the IXCs’ failure to conduct “meaningful discussions” with their reseller customers. The IXCs’ refusals to coordinate with their resellers cannot justify their proposals, “given that secure, accurate data exchange is common practice in today’s business world.”¹⁴ Call completion information can be transmitted by resellers to IXCs by a variety of methods.¹⁵

CommuniGroup of K.C., Inc., *et al.* (“CommuniGroup”) and Flying J Inc. and TON Services, Inc. (“Flying J”) propose that IXCs be permitted to require resellers to provide call completion data in a standard format and that IXCs be prohibited from seeking payphone compensation reimbursement for all calls routed to resellers unless a reseller fails or refuses to provide such data.¹⁶ Thus, resellers would have the choice of reimbursing IXCs for all payphone calls routed to resellers or providing the call completion data necessary for IXCs to limit their payphone compensation payments for such calls to those that are completed.¹⁷ This approach effectively would require IXCs to accept resellers’ tracking data. As CommuniGroup points out, such a requirement is implicit in the Commission’s holding in the *Second Reconsideration Order*

¹³ RBOC Coalition Comments at 7.

¹⁴ Intellicall Comments at 6.

¹⁵ Telstar Comments at 16.

¹⁶ Flying J Comments at 10-12; CommuniGroup Opp. at 13-15.

¹⁷ CommuniGroup Opp. at 10.

that IXCs track “or arrange for the tracking of” all payphone calls routed to resellers.¹⁸ For resellers that cannot track calls routed to them, clearinghouses could provide the necessary tracking data.¹⁹ In either case, the IXCs’ purported justifications for their proposals are groundless.

The wisdom of requiring IXCs to accept reseller tracking data is confirmed by AT&T, which has backed away from its original proposal and now requests that payphone calls forwarded to resellers be treated as completed “at least in cases where the [reseller] does not have its own systems for tracking completed calls or where the [reseller] decides that the costs of maintaining such systems are greater than any cost savings likely to result from such tracking.”²⁰ Thus, under AT&T’s modified position, the reseller has the choice of providing tracking data to the IXC or reimbursing the IXC for payphone compensation for every call routed to the reseller,²¹ which is essentially the position taken by CommuniGroup, Flying J and other resellers. AT&T’s and the RBOC Coalition’s acceptance of reseller tracking data also rebuts WorldCom’s insistence that IXC and PSP reliance on such data would be unworkable.²²

Similarly, there was widespread consensus that, not only should PSP/reseller payment arrangements be permitted, but IXCs also should be required to acknowledge them by accepting reseller certifications of such arrangements and by not interfering with such arrangements in any way.²³ Moreover, as IDT Corporation points out, a reseller should not have to contract with all PSPs in order to avoid having to pay compensation for all calls routed to the reseller, as

¹⁸ *Second Reconsideration Order* at ¶ 16 (quoted in CommuniGroup Opp. at 10, 13).

¹⁹ *See, e.g.*, IPCA Comments at 10; CenturyTel Comments at 5-6.

²⁰ AT&T Comments at 2.

²¹ *Id.* at 3.

²² *See* WorldCom Comments at 3-6, 9-10.

²³ *See, e.g.*, Ad Hoc Resellers Comments at 6-7.

WorldCom proposes. Such a requirement would be impossible to meet.²⁴ WorldCom in fact has retreated partially from its initial position and now expresses willingness to acknowledge a reseller's compensation payment agreements with PSPs as long as it has such agreements with the largest 11 PSPs in the United States.²⁵ WorldCom's modified position still interferes unduly with PSPs' and resellers' freedom of contract. A reseller's compensation contract with a reseller should be honored by an IXC irrespective of the number of PSPs with whom the reseller has contracted.

Parties proposed a variety of reasonable solutions to Global Crossing's complaint that IXCs would be exposed to compensation claims from PSPs as a result of fraudulent or incorrect notifications by resellers that they were compensating such PSPs directly. For example, the Ad Hoc Resellers Coalition suggests that, when a reseller certifies to an IXC that it has a direct payment arrangement with a PSP, the IXC be relieved of any liability for compensation for the calls covered by the arrangement.²⁶ The RBOC Coalition proposes that if a reseller and a PSP agree to a direct compensation arrangement, the reseller should provide adequate, useable data to the IXC to permit the IXC to exclude the reseller's calls from its payment obligation.²⁷ Finally, a reseller that is not able to track calls should be able to meet its compensation obligations by using clearinghouses, rather than having to enter into written contracts with hundreds of PSPs.²⁸

B. The IXCs' Lack Of Cooperation Is Especially Unreasonable In The Case Of One Call

The IXC petitioners' requests are especially unreasonable in the case of a reseller such as One Call, which has had the systems in place to track all calls routed to it for years and has

²⁴ IDT Comments at 28.

²⁵ WorldCom Comments at 10-11.

²⁶ Ad Hoc Resellers Comments at 6-7.

²⁷ RBOC Coalition Comments at 9.

²⁸ IPCA Comments at 9-10.

contractual payment arrangements with numerous PSPs. WorldCom's elaborate description of the problems inherent in relying on reseller tracking data and PSP/reseller arrangements is entirely inapplicable to One Call.²⁹

For example, WorldCom mentions the complaints that APCC brought against 18 resellers for nonpayment of payphone compensation,³⁰ but APCC has never brought such a complaint against One Call. WorldCom complains that reseller tracking processes are inadequate and that resellers do not provide tracking data in a uniform format.³¹ One Call's tracking systems, however, are reliable and handle more than 2,000,000 completed calls per month nationwide. The Commission could solve the uniformity problem by requiring that such data be submitted to IXC's in a standard format, which also would obviate the timing problems WorldCom raises.³² WorldCom also complains of possible exposure to PSP claims in the event that a reseller that had notified WorldCom of its payment arrangement with a PSP goes out of business, refuses to pay the PSP or disputes the amount of compensation owed.³³ One Call, however, is a well established operator services provider that has been in business for a dozen years and has been dealing with many PSPs for almost as long. Finally, as discussed above, in the case of those resellers that do not have call tracking systems in place, other parties have pointed out that clearinghouses can work with resellers to provide all of the necessary data to IXC's and PSPs.

Moreover, the elaborate process WorldCom describes to ensure that an IXC does not compensate a PSP for calls that are covered by a contractual payment arrangement between a

²⁹ WorldCom Comments at 3-6, 9-10.

³⁰ *Id.* at 3.

³¹ *Id.* at 4, 5.

³² *See id.* at 5-6.

³³ *Id.* at 9.

reseller and a PSP is inapplicable to One Call.³⁴ All of One Call's payment contracts with PSPs are for 0+ calls, which come to One Call's network over dedicated trunks from the underlying IXC, including WorldCom.³⁵ WorldCom, or any other underlying IXC, therefore knows that any call going over the dedicated trunks to One Call is covered by a contractual payment arrangement and thus need not be considered in calculating the IXC's own payphone compensation payments to PSPs. Accordingly, IXCs have not had to consider those calls for payphone compensation purposes, and they can continue to ignore those easily identified calls.

IV. APCC's PROPOSAL DOES NOT BALANCE ALL INTERESTS FAIRLY

Although AT&T and other commenters support the American Public Communications Council ("APCC") proposal as an appropriate compromise reflecting all legitimate interests,³⁶ that proposal would have the same net effect as the IXCs' requests and is equally objectionable. The only differences between APCC's approach and that of the IXC petitioners is that APCC: (1) would allow the IXCs to agree to use reseller data as an alternative to paying compensation for every call routed to a reseller; and (2) would allow resellers to negotiate payment arrangements with PSPs with IXC consent.³⁷

With regard to the first difference, allowing IXCs to determine whether to accept reseller tracking data or to treat every call routed to a reseller as complete would exert no leverage on IXCs to be reasonable in their dealings with resellers. In order to bring about the exchange of data that all of the parties say they want, the IXCs must be prohibited from treating every call routed to a reseller as completed unless the reseller fails to provide the necessary data. Otherwise, there is no incentive for the IXC to refrain from the easier, anticompetitive alternative

³⁴ See WorldCom Comments at 10.

³⁵ There is some question as to whether One Call can be considered a reseller on those payphone lines or is simply obtaining transport services from the IXCs involved.

³⁶ AT&T Comments at 4.

³⁷ APCC Comments at 8-11.

of treating every call routed to a reseller as completed. Similarly, with regard to the second difference, if IXC's are given a veto over PSP/reseller contracts, there will not be any such contracts or at least none without onerous requirements imposed on them. In other words, the APCC proposal is simply the IXC petitioners' requests with some frills.

V. CONCLUSION

The overwhelming weight of the comments reinforces One Call's opposition to the AT&T, WorldCom and Global Crossing petitions. The relief they seek is anticompetitive and unlawful under the Act, and the justifications they offer cannot withstand analysis. Their requests should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing Reply Comments of One Call Communications Inc. was served on this 22nd day of October, 2001, by U.S. mail, first-class postage prepaid, on

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